

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jason Metsa and Metsa for House,

Complainants,

vs.

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

Jesse Colangelo and Colangelo for House,

Respondents.

On November 19, 2012, the above-entitled Fair Campaign Practices Complaint came before a Panel of three Administrative Law Judges: Manuel J. Cervantes (Presiding Judge), Barbara Neilson, and Miriam Rykken.

The matter was submitted to the Panel based on the record created at the October 24, 2012, Probable Cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, and the Probable Cause Order. The OAH record closed on November 19, 2012.

STATEMENT OF THE ISSUES

Did Respondents violate Minn. Stat. §§ 211B.02 and 211B.06 by stating on campaign material that Mr. Colangelo was endorsed by the National Rifle Association (NRA) in the November 2012 general election?

The Panel concludes that the Complainants have established that Respondents violated Minn. Stat. §§ 211B.02 and 211B.06. The Panel concludes further that it is appropriate to assess Respondents a civil penalty in the amount of \$250.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. The Complainant, Jason Metsa, was the DFL endorsed candidate for the Minnesota House of Representatives District 6B seat.¹ Metsa for House is the name of Mr. Metsa's campaign committee.

2. Respondent Jesse Colangelo was the Republican Party of Minnesota's endorsed candidate for Minnesota House District 6B. Mr. Colangelo ran unopposed in the Republican primary election.²

3. On or about July 26, 2012, Mr. Colangelo received a letter from the NRA stating that it was endorsing him in the August 2012 primary election.³

4. After receiving the letter, Mr. Colangelo designed and had printed 100 campaign signs that used the phrase "GOP & NRA endorsed."⁴ Mr. Colangelo designed the signs in late July of 2012 and the printing of the signs was completed on or about August 28, 2012. Mr. Colangelo and his supporters posted the campaign signs throughout the district.⁵

5. Mr. Colangelo also prepared and broadcast radio advertisements and created a web-based advertisement linked through his FaceBook social media site that used the phrase "GOP & NRA endorsed."⁶ The radio and web-based advertisements began running in late August 2012.⁷

6. On or about October 12, 2012, Mr. Colangelo received a telephone call from a reporter at the *Mesabi Daily News* inquiring about Mr. Colangelo's NRA endorsement. The reporter noted that the NRA's website did not list an endorsement for either Mr. Colangelo or Mr. Metsa in the Minnesota House 6B legislative race.⁸ Mr. Colangelo told the reporter that the NRA endorsed him for the primary election and that "nothing's changed, as far as I know."⁹

7. On that same day, Mr. Colangelo also received an email from a reporter at the *Duluth News Tribune* who inquired as to Mr. Colangelo's NRA endorsement.¹⁰

8. During the evening of October 12, 2012, the reporter from the *Mesabi Daily News* posted an article on the newspaper's website regarding Mr. Colangelo's disputed NRA endorsement claim. The article quoted Jacqueline Otto, the NRA's media liaison,

¹ Minnesota House District 6B is located in St. Louis County. It includes that eastern half of the Iron Range and the cities of Eveleth and Virginia.

² Testimony of Jesse Colangelo.

³ Complaint Ex. 6.

⁴ Complaint Ex. 1.

⁵ Testimony of Jesse Colangelo. (References are to testimony provided at the Probable Cause hearing.)

⁶ Colangelo Test.; Complaint Ex. 2

⁷ Colangelo Test.

⁸ Complaint Ex. 4.

⁹ Colangelo Test.; Complaint Ex. 5.

¹⁰ Colangelo Test.

as stating that both Mr. Colangelo and Mr. Metsa were “AQ” rated but not NRA endorsed in the general election.¹¹ An “AQ” rating means that, based on a candidate’s responses to the NRA’s Candidate Questionnaire, the NRA considers the candidate to be a “pro-gun” candidate. The NRA designated both Mr. Colangelo and Mr. Metsa “AQ” candidates for the November 2012 general election.¹²

9. Mr. Colangelo contacted both the *Duluth News Tribune* and the *Mesabi Daily News* and clarified that he was not endorsed by the NRA in the general election. Both papers ran corrections in their October 13, 2012, editions clarifying that Mr. Colangelo’s NRA endorsement was for the primary election only and not the general election.¹³

10. Mr. Colangelo received the Campaign Complaint in this matter on or about October 19, 2012.

11. Sometime after he received the Campaign Complaint and prior to the October 24, 2012, Probable Cause hearing, Mr. Colangelo discontinued broadcasting his radio advertisements that used the phrase “NRA endorsed.”¹⁴

12. Just prior to the October 24, 2012, Probable Cause hearing, Mr. Colangelo sent an email to the designer of his website and directed him to remove the link to the web advertisement that used the phrase “NRA endorsed.”¹⁵

13. As of October 24, 2012, Mr. Colangelo’s website still included the statement that he was “NRA endorsed” and the link to his web advertisement had not been removed.¹⁶

14. During the Probable Cause hearing, Mr. Colangelo acknowledged that some of the 100 campaign signs that stated “NRA Endorsed” were still posted throughout the district. Mr. Colangelo offered to write a letter to the *Duluth News Tribune* requesting readers to either remove their signs or modify them by covering up the phrase “NRA endorsed.”¹⁷

15. Mr. Metsa defeated Mr. Colangelo in the November 6, 2012, general election. Mr. Metsa received 15,146 votes (68%) and Mr. Colangelo received 7,012 votes (32%).

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

¹¹ Complaint Ex. 5.

¹² Complaint Exs. 3-5.

¹³ Colangelo Test.

¹⁴ Colangelo Test.

¹⁵ Colangelo Test.

¹⁶ Colangelo Test.

¹⁷ Colangelo Test.

CONCLUSIONS

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, defines “campaign material” to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”

3. Mr. Colangelo’s lawn signs, radio advertisement, website, and web-based advertisement are campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

4. Minn. Stat. § 211B.02 provides:

211B.02 False Claim of Support.

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

5. The burden of proving the allegations in the complaint is on the Complainants. The standard of proof of a violation of Minn. Stat. § 211B.02 is a preponderance of the evidence.¹⁸

6. The Complainants have established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.02 by knowingly making a false claim stating that Jesse Colangelo had the endorsement of the National Rifle Association in the November 6, 2012, general election.

7. Minnesota Statutes § 211B.06, subd. 1, provides in part:

A person is guilty of a misdemeanor who intentionally participates in the preparation, [or] dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

¹⁸ Minn. Stat. § 211B.32, subd. 4.

8. The standard of proof of a violation of Minn. Stat. § 211B.06 is clear and convincing evidence.

9. The Complainants have demonstrated by clear and convincing evidence that the Respondents violated Minn. Stat. § 211B.06. The Complainants established that the Respondents knew as of October 12, 2012, that the claim of endorsement was false or they continued to communicate the claim with reckless disregard as to whether it was false.

10. It is appropriate to impose a civil penalty of \$250 against the Respondents for violating Minn. Stat. §§ 211B.02 and 211B.06.

11. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. §§ 211B.02 and 211B.06, Respondents Jesse Colangelo and Colangelo for House shall pay a civil penalty in the amount of \$250 by January 31, 2013.¹⁹

Dated: November 26, 2012

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Presiding Administrative Law Judge

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Miriam Rykken
MIRIAM RYKKEN
Administrative Law Judge

¹⁹ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620.

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Mr. Colangelo was endorsed by the National Rifle Association in the August 2012 Republican primary election. Mr. Colangelo ran unopposed in the Republican primary. Neither Mr. Colangelo nor Mr. Metsa were endorsed by the NRA in the general election. Instead, both candidates received “AQ” (pro-gun candidate) ratings based solely on their responses to the NRA’s Candidate Questionnaire.

Mr. Colangelo stated at the probable cause hearing that he mistakenly believed that the NRA’s endorsement was for both the primary and the general election. According to Mr. Colangelo, it was not until the newspaper reporters contacted him on October 12, 2012, that he realized he was not endorsed in the general election.

Minnesota Statutes § 211B.02 provides that a person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate has the support or endorsement of an organization. Minnesota Statutes § 211B.06 prohibits a person from preparing or disseminating false campaign material with respect to the personal or political character or acts of a candidate that the person knows is false or communicates with reckless disregard as to whether it is false.

The Respondents’ statements on campaign material that Mr. Colangelo is “NRA endorsed” was a true statement with respect to the primary election. However, once the primary was over, Mr. Colangelo’s candidacy was no longer endorsed by the NRA. By continuing to disseminate campaign material after the primary election that stated that Mr. Colangelo was “NRA endorsed,” the Respondents made false claims that Mr. Colangelo had the NRA endorsement in the general election.

Mr. Colangelo insists that his misunderstanding of the endorsement was an honest mistake, and that he never intended to mislead the public or to claim falsely that he was endorsed by the NRA in the general election.

While the Panel is persuaded that Mr. Colangelo was initially mistaken about the nature of the NRA endorsement, the record established that as of at least October 12, 2012, when he was contacted by the newspaper reporters, he was aware that he was no longer endorsed by the NRA. At that point, any further dissemination of campaign material claiming he had the NRA endorsement was a knowing violation of Minn. Stat. §§ 211B.02 and 211B.06. Mr. Colangelo should have immediately pulled the radio advertisements, deleted the phrase from his website, shut down the link to his web advertisement, and made a good faith effort to correct the remaining campaign signs. Instead, Mr. Colangelo waited at least a week to pull the radio advertisements off the air,

and almost two weeks before he made any effort to correct his website and web-based advertisement – and he conceded that he made no effort to correct the lawn signs posted in the district.

The Panel concludes that the claim of NRA endorsement was false after the primary election and that, as of October 12th, the Respondents knew the claim was false but continued to disseminate that claim for at least a week. By doing so, the Respondents violated both Minn. Stat. §§ 211B.02 and 211B.06.

The Panel concludes further that the violation, while initially inadvertent, could have been more promptly corrected and may have had at least a minimal impact on voters. The Panel finds that a civil penalty in the amount of \$250 is appropriate in this case.

M.J.C, B.L.N., M.R.